

**Letter of Findings: 02-20120391**  
**Corporate Adjusted Gross Income Tax**  
**For the Year 2007, 2008, 2009, 2010**

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**ISSUES**

**I. Tax Administration – Claim for Refund/Carryforward – Statute of Limitations.**

**Authority:** IC § 6-8.1-9-1.

Taxpayer protests the denial of its request to carryforward an overpayment of tax on its 2007 Adjusted Gross Corporate Income Tax return.

**II. Tax Administration – Various Penalties and Interest.**

**Authority:** IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of various penalties and interest on its late-filed returns for the years 2007 through 2010.

**STATEMENT OF FACTS**

Taxpayer is an Indiana corporation doing business in Indiana. On April 16, 2012, Taxpayer filed its 2007, 2008, 2009, and 2010 Indiana Corporate Adjusted Gross Income tax returns. On the 2007 return, Taxpayer reported an overpayment of tax which Taxpayer then carried forward as successive payments on its 2008, 2009, and 2010 returns.

The Indiana Department of Revenue ("Department") denied the carryforward from the 2007 return because it was out of statute. Consequently, without the 2007 carryforward, tax became due for the years 2008, 2009, and 2010. The Department billed Taxpayer for the taxes due for those years, as well as penalties and interest.

Taxpayer protested the denial of the overpayment carryforward, as well as the resulting penalties and interest. The Department held a hearing on the protests and this final determination ensues. Additional information will be provided as necessary.

**I. Tax Administration – Claim for Refund/Carryforward – Statute of Limitations.**

**DISCUSSION**

The Department denied Taxpayer the opportunity to carry forward its 2007 overpayment to the 2008 through 2010 returns because Taxpayer filed the 2007 return after the deadline for claiming refund/carryforward had expired. The 2007 return was due on April 15, 2008. Taxpayer filed the 2007 return on April 16, 2012, a full year after the 3-year statute of limitation to claim refund/carryforward had expired. IC § 6-8.1-9-1 governs the deadline for requesting refund or carryforward of a tax overpayment. IC § 6-8.1-9-1(a) states:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. Except as provided in subsections (f), (g), and (h), **in order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of the following:**

**(1) The due date of the return.**

**(2) The date of payment.**

For purposes of this section, the due date for a return filed for the state gross retail or use tax, the gasoline tax, the special fuel tax, the motor carrier fuel tax, the oil inspection fee, or the petroleum severance tax is the end of the calendar year which contains the taxable period for which the return is filed. The claim must set forth the amount of the refund to which the person is entitled and the reasons that the person is entitled to the refund. **(Emphasis added).**

Taxpayer explains that it was late in filing its returns because of problems with the accounting firm it had initially contracted with to file its returns in which the current owners bought the company in 2000. Taxpayer states it had difficulty tracking down the original documents it had turned over to this accounting firm. Taxpayer explains that it then hired a second accounting firm, in 2009, to clean up the mess created by the first accounting firm and to file its federal and state returns.

Irrespective of the reason why the returns were filed late, the 3-year statute of limitations to claim refund/carryforward of an overpayment of tax had run out. Taxpayer's 2007 Corporate Income Tax return was due on April 15, 2008, but was not filed until April 16, 2012, one full year after the 3-year statute of limitations had expired.

The Department correctly denied the carryforward of the 2007 overpayment to the subsequent tax years, 2008, 2009, and 2010.

**FINDING**

Taxpayer's protest of the denial of the carryforward of its 2007 overpayments is respectfully denied.

## II. Tax Administration – Various Penalties and Interest.

Because the Department denied Taxpayer's carryforward from the 2007 return Taxpayer's application of the carryforward was invalidated and tax became due for the years 2008, 2009, and 2010. The Department billed Taxpayer for the taxes due for those years, as well as penalties and interest.

Regarding interest, under IC § 6-8.1-10-1(e) interest cannot be waived.

Penalty waiver, however, is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1(d). The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer protested the assessment of penalties again explaining that the late filing of its returns was connected to the problems it had with the accountants it had originally hired to handle their tax returns as explained above. While the circumstances relating to the professionals Taxpayer hired to file its tax returns are unfortunate, Taxpayer's problems were not limited to the first accounting firm Taxpayer hired. The second firm Taxpayer hired also missed the statute of limitations for claiming the refund/carryforward of the 2007 overpayment.

Given the problems Taxpayer had with the first accounting firm it hired to handle its taxes, Taxpayer was on notice that it needed to attend to its filing obligations more rigorously. Taxpayer has not provided sufficient explanation to show that it had reasonable cause in the late filing of its returns.

### FINDING

Taxpayer's protest of the assessment of penalties and interest is respectfully denied.

*Posted: 12/26/2012 by Legislative Services Agency*

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